

On September 7, 2005, the ALJ ordered another independent medical examination of claimant be performed by Dr. Paul S. Stein. On October 7, 2005, the doctor examined claimant and in his report concluded the claimant's hip symptoms which resulted in surgery were causally related to the slip and fall accident which aggravated the previously asymptomatic degenerative disease in claimant's hip.

On January 9, 2006, another preliminary hearing was conducted and claimant sought payment of his medical bills related to treatment/surgery for his hip, temporary total disability compensation, mileage reimbursement and lodging expenses. Respondent again denied that the hip condition was either caused by or a consequence of the slip and fall accident in December 2003.

The ALJ ordered respondent to pay claimant temporary total disability compensation from the date of the hip surgery as well as the related medical bills, mileage reimbursement and lodging expenses.

The respondent requests review of whether the claimant's hip injury arose out of and in the course of employment and whether the ALJ exceeded her jurisdiction in granting the claimant's request for reimbursement of lodging expenses.

Claimant argues the ALJ's Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Riley Allaman is a bus mechanic who repairs and maintains the buses for the respondent. On December 8, 2003, the claimant slipped and fell on the ice at work. He injured his knee and was provided medical treatment. Claimant testified he began having pain in his hip before his knee surgery and then it progressively worsened during physical therapy for his knee.

Dr. Jason Stuermer's notes on April 8, 2004, indicated the claimant had been having "left hip pain for the past 1 to 2 months." On July 6, 2004, the claimant saw Dr. Stuermer who stated in his report that the claimant's left hip pain was probably associated with his fall at work in December 2003.

But in a letter dated May 29, 2004, Dr. Michael J. Baughman stated: "I don't believe that Mr. Allaman's hip and thigh complaints have a chronological relationship to his stated injury of 9 December 2003."¹

¹ P.H. Trans. (Dec. 13, 2004), Resp. Ex. 1.

As noted, at the initial preliminary hearing the ALJ ordered Dr. Hood to perform an independent medical examination of claimant. After obtaining additional testing, the doctor concluded claimant's degenerative hip condition was not permanently aggravated or accelerated by the slip and fall accident. In a letter dated March 17, 2005, Dr. Roger W. Hood opined:

I do not feel that there is any evidence that this represents anything to do with trauma. I do not have any doubt that the trauma could have temporarily aggravated it but I do not feel it has accelerated it and I, therefore, think that the treatment that he needs for it which is total hip arthroplasty should be covered by his regular health insurance and should not be the responsibility of work comp.²

The doctor later testified claimant had a worn out hip caused by degenerative arthritis and that condition had not been aggravated by his slip and fall accident. The doctor testified:

Q. Do you believe that the fall that he had on December 8th, 2003 aggravated or accelerated the degeneration in his hip or the problems in his hip?

A. I do not.

Q. Do you believe that any of the treatment that he had for his knee as a result of the December 8th, 2003 injury aggravated or accelerated the process in his knee?

A. In his knee?

Q. I mean in his hip. I'm sorry.

A. I don't think – I think his fall could have temporarily aggravated his hip, but he didn't report that and there's nothing to support that in the medical records. The hip pain appeared later than that, so I don't think the fall does anything here. And he got good treatment for his knee. His knee also is worn out and was bone on bone through the arthroscope, so this isn't an isolated process in this gentleman. But he got treatment, his knee was getting better, his knee got along good after the arthroscopy, and I don't think that the treatment that he had caused any significant aggravation or acceleration of his hip condition.³

At the request of claimant's attorney, on May 10, 2005, Dr. C. Reiff Brown performed an evaluation and examination of claimant and opined:

² P.H. Trans. (Jan. 9, 2006), Resp. Ex. 1.

³ Hood Depo. at 12-13.

It is also my opinion that this injury as well as resultant gait disturbance aggravated preexisting degenerative arthritic change in the left hip rendering it symptomatic. He was totally asymptomatic regarding his left hip prior to this injury and in the relatively short period of time he has sufficient hip joint pathology and pain to be near the point of considering a total hip arthroplasty. This should be done whenever he feels his symptoms are severe enough to proceed with operative treatment.⁴

Dr. Paul S. Stein also performed a court ordered independent medical examination of claimant and opined:

Mr. Allaman also reported pain in the left hip subsequent to the work accident. It is my opinion, within a reasonable degree of medical probability, that the left hip symptomatology for which surgery was recently done is causally related to his work injury by virtue of aggravation of the previously asymptomatic degenerative disease. Evaluation for the hip arthroplasty can be done after full recovery from surgery and release by Dr. Woods.⁵

It is well settled in this state that an accidental injury is compensable even where the accident only serves to aggravate or accelerate an existing disease or intensifies the affliction.⁶ The test is not whether the job-related activity or injury caused the condition but whether the job-related activity or injury aggravated or accelerated the condition.⁷

Both Drs. Brown and Stein concluded the slip and fall accident resulted in the claimant's previously asymptomatic degenerative arthritic hip condition to become symptomatic. Conversely, Dr. Hood noted that although the accident could have temporarily aggravated claimant's preexisting hip condition there was nothing in the records he reviewed to conclude that had happened. He further concluded the accident did not aggravate or accelerate claimant's preexisting degenerative arthritis in his hip.

Claimant's hip was asymptomatic until after the slip and fall accident. As claimant received treatment for his knee he began to experience pain in his hip. Claimant testified he began to experience pain in his hip before his knee surgery and that pain continued to worsen as he underwent physical therapy for his knee. The Board finds Drs. Brown and Stein more persuasive and affirms the ALJ's finding the claimant's preexisting degenerative

⁴ *Id.*, Cl. Ex. 1 at 3.

⁵ *Id.*, Cl. Ex. 2 at 5.

⁶ *Harris v. Cessna Aircraft Co.*, 9 Kan. App. 2d 334, 678 P.2d 178 (1984); *Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978); *Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 547 P.2d 751 (1976).

⁷ *Hanson v. Logan U.S.D.* 326, 28 Kan. App.2d 92, 11 P.3d 1184, *rev. denied* 270 Kan. 898 (2001); *Woodward v. Beech Aircraft Corp.*, 24 Kan. App.2d 510, 949 P.2d 1149 (1997).

arthritis in his hip was aggravated and accelerated as a result of the December 8, 2003 accidental injury.

In the alternative, the respondent argued that the ALJ exceeded her jurisdiction ordering it to pay for motel expenses at \$38.87 a night. Claimant's exhibit included an itemization at \$38.87 a night for five nights at a motel.⁸ But the exhibit indicates the motel was for claimant's wife during the time claimant was hospitalized for his hip surgery.

K.S.A. 44-515 provides in part:

If the employee is notified to submit to an examination before any health care provider in any town or city other than the residence of the employee at the time that the employee received an injury, the employee shall not be required to submit to an examination until such employee has been furnished with sufficient funds to pay for transportation to and from the place of examination at the rate prescribed for compensation of state officers and employees under K.S.A. 75-3203a and amendments thereto, for each mile actually and necessarily traveled to and from the place of examination, any turnpike or other tolls and any parking fees actually and necessarily incurred, **and in addition the sum of \$15 per day for each day or a part thereof that the employee was required to be away from such employee's residence to defray such employee's board and lodging and living expenses.** (Emphasis added.)

The foregoing statute contemplates payment of an obviously inadequate \$15 per day for the employee to defray lodging and living expenses while the employee is required to be away from home. It does not authorize payment of lodging for the employee's spouse while the employee is hospitalized for surgery. The ALJ exceeded her jurisdiction and reimbursement for the motel expenses is denied.

WHEREFORE, it is the finding of the Board that the Order of Administrative Law Judge Pamela J. Fuller dated January 10, 2006, is modified to deny the four nights lodging expenses and affirmed in all other respects.

IT IS SO ORDERED.

Dated this _____ day of March 2006.

BOARD MEMBER

⁸ P.H. Trans. (Jan. 9, 2006), Cl. Ex. 3.

c: D. Shane Bangerter, Attorney for Claimant
Anton C. Andersen, Attorney for Respondent and its Insurance Carrier
Pamela J. Fuller, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director